



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 05695-99

28 September 2000

LCDR [REDACTED] USN

Dear Command [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command (PERS-311) dated 23 December 1999 and 19 May 2000, PERS-61 dated 19 January and 15 June 2000 with enclosures, and PERS-85 dated 3 February and 21 July 2000, copies of which are attached. The Board also considered your letters dated 8 March and 19 August 2000, each with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

In finding that the contested fitness report for 1 November 1995 to 31 October 1996 should stand, the Board particularly noted that your first input to the investigating officials was in January 1997, while the report at issue had been submitted on 4 November 1996, so it could not have been in reprisal. Despite the findings that led to the decision to have Captain C---'s immediate superior in command (ISIC) act as your reporting senior on your report for 1 November 1996 to 8 August 1997, the Board was unable to find Captain C--- was biased against women or fostered an environment hostile to women. In this regard, they particularly noted that he submitted the uncontested report for 2 June to 31 October 1995, in which you were recommended for "early" promotion (best possible).

Notwithstanding the recommendation, in the PERS-61 advisory opinion dated 15 June 2000, to remove the contested fitness report for 1 November 1996 to 8 August 1997, the Board found this report should stand as well. They were unable to find the ISIC did, in fact, take input from Captain C---, or if he did, that such input influenced his evaluation of your performance. They noted that the officer who gave the supporting statement dated 22 December 1999 did not say the ISIC did not obtain her input regarding your performance. In any event, the Board was unable to find the ISIC lacked sufficient reliable information to evaluate you properly, noting that his observation did not have to be direct, and that he had you as a source of input. They were unable to find the ISIC would have retaliated against you in reprisal for your actions against Captain C---. Your low marks in this report, including the "3.0" (third best) in "Equal Opportunity," did not convince them you were the victim of reprisal or discrimination, regardless of your assigned duties as an equal opportunity officer.

The Board could not find you deserved more favorable reports for the pertinent periods. In this connection, they noted that your uncontested report from a new reporting senior at the same station, for 9 August to 17 September 1997, marked you "Must Promote" (second best), the same promotion recommendation you received in the contested reports.

Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year 00 and 01 Staff Commander Selection Boards or grant you consideration by a special selection board.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



569500

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
23 DEC 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LCDR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her fitness reports for the periods 1 November 1995 to 31 October 1996 and 1 November 1996 to 8 August 1997.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the fitness reports in question to be on file. The member signed each report acknowledging the contents of each and her right to submit a statement. The member indicated she did desire to submit a statement, however, no statement was ever received for the fitness report for the period 1 November 1995 to 31 October 1996. The member's statement and first endorsement are properly reflected in the member's digitized record for the fitness report for the period 1 November 1996 to 8 August 1997.

b. The member alleges the fitness reports in question was a form of reprisal and was an inaccurate evaluation of performance due to her involvement in an EO complaint concerning discrimination and unfair practices under the leadership of [REDACTED] who was her reporting senior.

c. The fitness report for the period 1 November 1995 to 31 October 1996 is procedurally correct. There are no indications that the reporting senior's motive was illegal or improper.

d. The reporting senior is the judge of the performance of subordinates. While the member may disagree with the reporting senior's evaluation, it all comes down to the requirement that the reporting senior must make a judgment and rank the officers. In both fitness reports the reporting senior assigned the member a promotion recommendation of "Must Promote". Such a ranking does not indicate a failing on Lieutenant Commander [REDACTED], but rather that the reporting seniors gave greater value to the contribution of the other officer in the summary group or that he ranked both officer's in the summary group the same.

Subj: LCDR [REDACTED] U [REDACTED]

e. The reporting senior detached from COMFLEACT Sasebo, Japan on 8 August 1997. The Commander in Chief, U. S. Pacific Fleet (CINCPACFLT) directed the Immediate Superior in Command (ISIC) assume the reporting senior's authority which was further delegated to CAPT [REDACTED] Deputy and Chief of Staff to write the fitness report for the period 1 November 1996 to 8 August 1997. The reporting senior's endorsement to [REDACTED] statement states his written performance comments support his assigned grades within the context of his grading profile as a reporting senior.

f. A fitness report does not have to be consistent with previous or subsequent reports. Each fitness report represents the judgment of the reporting senior during a particular period.

g. Failure of selection is not sufficient reason to remove a fitness report.

h. The member does not prove the report to be unjust or in error.

3. We recommend the member's petition be forwarded to the Director, Equal Opportunity Division (Pers-61) for comments on the member's allegation of discrimination and to the Director, Active Officer Promotions, Appointments, and Enlisted Advancements Division (PERS-85) for comments on the member's request for a special selection board and removal of her failure to select.

4. We recommend the member's record remain unchanged. However, should the member's allegation of discrimination be found to have merit, we have no objection to removal of the reports as requested.

[REDACTED]

Head, Performance
Evaluation Branch

5645-99



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
19 May 2000

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LCDR [REDACTED] US [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) Our Memo 1610 PERS-311 of 23 DEC 99

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests reconsideration to remove her original fitness reports for the periods 1 November 1995 to 31 October 1996 and 1 November 1996 to 8 August 1997, removal of failure to select, consideration by a special selection board, and to be considered by the next regularly scheduled Supply Corps Commander Promotion Selection Board as an above-zone officer not previously considered.

2. Based on our review of the material provided, we find the following:

a. We have reconsidered the member's petition based on the new material presented.

b. Lieutenant Commander [REDACTED] provided two very impressive letters of support in her petition, including her immediate supervisor during the reporting period and the Chief Staff Officer. However, these individuals were not responsible for evaluating her performance. While their comments add insight and reflect favorably on the member's performance they do not show that the fitness reports were in error.

c. The member does not prove the report to be unjust or in error.

3. We recommend the member's petition be forwarded to the Director, Equal Opportunity Division (Pers-61) for comments on the member's allegation of discrimination and to the Director, Active Officer Promotions, Appointments, and Enlisted Advancements Division (PERS-85) for comments on the member's request for a special selection board and removal of her failure to select.

4. We recommend the member's record remain unchanged. However, should the member's allegation of discrimination be found to have merit, we have no objection to removal of the reports as requested.

A large, dark, irregularly shaped redacted area, likely covering a signature or name.

Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

1610

PERS-61/011

19 Jan 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT COMMANDER [REDACTED] USN,
[REDACTED]

Ref: (a) PERS-00ZCB memo 5420 of 29 Dec 99
(b) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 05695-99

1. Reference (a) requested an advisory opinion in response to Lieutenant Commander [REDACTED] request to remove fitness reports from her record for the periods 1 November 1995 to 31 October 1996 and 1 November 1996 to 8 August 1997. Enclosure (1) is returned.

2. Lieutenant Commander [REDACTED] alleges that the two fitness reports are discriminatory, retaliatory in nature and do not accurately reflect her performance. Her commanding officer signed the first report, ending 31 October 1996. Lieutenant Commander [REDACTED] submitted an EO complaint which was forwarded to the ISIC, COMNAVFORJAP, claiming that she was a subject of discrimination. COMNAVFORJAP assigned an investigating officer. The investigation found the complaint to be unsubstantiated.

3. Lieutenant Commander [REDACTED] then appealed the findings to CINCPACFLT, who conducted another investigation. She also requested that COMNAVFORJAP sign her fitness reports. In response to the appeal and additional investigation, CINCPACFLT concluded that the commanding officer failed to ensure a command climate free from perceptions of gender bias and favoritism. Based on those conclusions, CINCPACFLT administratively censured the CO and directed the ISIC, COMNAVFORJAP, fitness report authority for reports ending 8 August 1997.

4. The change of command report, ending 8 August 1997, was signed by the COMNAVFORJAP Chief of Staff. This report documented lower marks for Lieutenant Commander [REDACTED] and recommended both 0-4s being graded as "must promote".

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT COMMANDER [REDACTED] USN,

Lieutenant Commander [REDACTED] submitted a statement to Chief of Naval Personnel in response to what she considered to be a retaliatory fitness report.

5. The BCNR package submitted by Lieutenant Commander ██████████ referred to two fitness report recommendations by the Chief of Staff, Commander, U.S. Fleet Activities Sasebo, Japan and the NEX Officer, Japan District. These reports were not included in the package.

6. Based on the information provided, I do not believe the two fitness reports in question are discriminatory or retaliatory. It should be noted that the fitness report signed by the commanding officer is the new version fitness report and has considerably different grading scales than the old version. Most officers and Sailors receiving their first evaluation or fitness report under the revised system were disappointed in their marks. Although CINCPACFLT substantiated a perception of gender bias and favoritism, I do not believe the fitness reports to be biased per reference (b). I recommend they remain in her record.

Director, Professional
Relationships Division
(PERS-61)



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-61/094
15 Jun 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT COMMANDER [REDACTED] USN,
[REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 24 May 00
(b) PERS-61/011 memo of 19 Jan 00
(c) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 05695-99
(2) PERS-61 Record of Complaint

1. Reference (a) requested an advisory opinion in response to Lieutenant Commander [REDACTED] request to remove fitness reports from her record for the periods 1 November 1995 to 31 October 1996 and 1 November 1996 to 8 August 1997. This is a request for reconsideration of a previous opinion that was provided by this office as indicated in reference (b). Enclosure (1) is returned.

2. Lieutenant Commander [REDACTED] alleges that the two fitness reports are discriminatory and retaliatory in nature and do not accurately reflect her performance. Her Commanding Officer signed the first report, ending 31 October 1996. Lieutenant Commander [REDACTED] submitted an EO complaint, which was forwarded to the ISIC, COMNAVFORJAP, claiming that she was a subject of discrimination. COMNAVFORJAP assigned an Investigating Officer, who had investigated an earlier complaint against the same Commanding Officer. The investigation was unsubstantiated.

3. Lieutenant Commander [REDACTED] appealed the findings to CINCPACFLT, who conducted another investigation. In response to the appeal and additional investigation, CINCPACFLT concluded that the Commanding Officer failed to ensure a command climate free from perceptions of gender bias and favoritism. Based on those conclusions, CINCPACFLT administratively censured the Commanding Officer and directed the ISIC, COMNAVFORJAP, fitness reports authority for the report ending 8 August 1997.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
LIEUTENANT COMMANDER [REDACTED], USN,
[REDACTED]

4. The Change of Command report, ending 8 August 1997, was signed by the COMNAVFORJAP Chief of Staff. This report documented lower marks although rated both 0-4s being graded as "must promote". Lieutenant Commander [REDACTED] submitted a statement to Chief of Naval Personnel in response to what she considered to be a retaliatory fitness report.

5. The BCNR package submitted by Lieutenant Commander [REDACTED] referred to two fitness report recommendations by the Chief of Staff, Commander, U.S. Fleet Activities Sasebo, Japan and the NEX Officer, Japan District. These reports were not included in the original package of September 1999. These two reports are included in this package and are the basis for the reconsideration.

6. The two references reflect very favorably on Lieutenant Commander [REDACTED] ability, performance and professionalism. I have just recently found some old PERS-61 files that correspond to the allegations surrounding this particular complaint of discrimination and retaliation. The files are included as enclosure (2).

7. I still do not believe the first fitness report in question is discriminatory or retaliatory in accordance with reference (c). Retaliation is hard to prove, especially if the ISIC has been designated as the reporting senior authority. I do have to wonder why she received the marks of 3.0 in EO if she was the command's CMEO Manager. The marks do show a significant decline in the second report, although I understand it is an entirely different reporting senior. In light of the information in enclosure (2), I recommend that the fitness report signed by the ISIC be removed. There appears to be hints of bias in the marks, however, the report is not an adverse report.

8. Since there were several references to investigations, I recommend that Navy IG or the appropriate IG records be researched to see if there is collaborative evidence of bias and retaliation.

[REDACTED]

Director, Professional
Relationships Division
(PERS-61)

5695-00

To: CNP

1. Admiral, provided is an E-mail received from the EA, COMFLEACT [REDACTED]. She and others are experiencing reprisal after providing negative statements about the CO [REDACTED] during an IG investigation concerning fraternization and sexual discrimination charges.

Very respectfully

Copy to:
DCNP

ENCLOSURE(2)

MEMORANDUM FOR THE NAVY INSPECTOR GENERAL

Subj: REPRISAL ICO CO, COMFLEACT SASEBO

Encl: (1) EA, FLEACT Sasebo E-mail of 3 Jul 97

1. Enclosure (1) is provided as a matter under your cognizance.

From: [REDACTED] <P00WB@BUPERS.Navy.mil>
To: [REDACTED] <c01@cfas.navy.mi...
Date: 7/3/97 7:23am
Subject: RE: EO

Pam,

We take all complaints about sexual harassment very seriously here. It is also a concern when there are possible retributions felt by the individuals who made the complaint. Sexual harassment is not one of the policies that this office is responsible for. I am passing your email to the folks who own the policy. I know they will be able to help you with your questions and concerns.

[REDACTED]

> -----
> From: [REDACTED] (CSO) [SMTP:c01@cfas.navy.mil]
> Sent: Wednesday, June 18, 1997 7:02 PM
> To: [REDACTED]
> Subject: FW: EO

> >-----
> >From: [REDACTED] (CSO)
> >Sent: Thursday, June 19, 1997 7:25AM
> >To: 'P00W/2WW@BUPERS.NAVY.MIL'
> >Subject: FW: EO

> >-----
> >From: [REDACTED] (CSO)
> >Sent: Wednesday, June 18, 1997 3:12PM
> >To: 'p2ww@bupers.navy.mil'
> >Subject: EO

> >I am [REDACTED] Chief Staff Officer of COMFLEACT Sasebo, Japan.
> I am
> >writing to you to see if you can possibly give me any advice on a
> situation
> >that's brewing out here.
> >
> >I'm going to try to make this quick and simple;
> >
> >About four months after my arrival in [REDACTED] we been here

Encl(1)

since

> September)
> >my boss, [REDACTED] was the subject of an (as far as I know,
> anonymous)
> >IG investigation - charges included sexual discrimination.
Although
> I and
> >other command members gave pretty strong statements supporting the
> charges,
> >the claims were found to be unsubstantiated at the CNFJ level.
> >
> >About 2 months ago, my Navy Exchange Officer, [REDACTED]
[REDACTED]
> filed an
> >EO and fraternization complaint against the Capt. CNFJ also found
> this
> >complaint to be unsubstantiated (although once again, they received
> >statements supporting her claims) . [REDACTED] appealed the
> decision to
> >CINCPACFLT. CINCPACFLT has re-opened the case. The word I've gotten
> from
> >CINCPACFLT (N16) is that the CINC (or DCINC) will sign a letter out
> this
> >Thursday to appoint an investigating officer.
> >
> >My concern is three-fold;
> >
> >1. Every time the [REDACTED] one of these raps, life becomes more
> unbearable
> >for those of us who have made negative statements. I know the
> reports are
> >supposed to be sensitive, and reprisal is not supposed to take place
> - I'm
> >here to tell you, that sounds great on paper but reality is a
> different
> >matter. Reprisal can be very difficult to prove. Tips on post
> investigative
> >survival?
> >
> >2. The Capt is supposed to have his Change of Command on 8 Aug.
> Since
> >CINCPACFLT is not working under any deadline to complete the
> investigation,
> >is it possible that he could slip out of here.....and

then....out

> of
> >sight, out of mind? Is there a policy concerning this situation?
> >
> >3. Here's the kicker - after reading this you'll probably just
> delete my
> >E-mail. The Capt is a favorite [REDACTED] because he's done so
> much
> >(facilities wise) to help the base here in Sasebo. I can't help but
> think
> >that whoever they send out here to do the investigation will have
> that in the
> >back of their mind. I'm probably just venting here....I honestly
> don't think
> >there's anything I can do about that.
> >
> >With your vast experience and corporate knowledge about "what works"
> and
> >"what doesn't" - can you
> >give me some pointers on how to deal with these three issues?
> >
> >- One more additional note - my predecessor, [REDACTED] Benson, tried
> to
> >present her concerns regarding the Capt's attitude towards women to
> CNFJ and
> >they ignored her too. According to CNFJ, she [REDACTED] just had
> "performance
> >problems". (Not if you look at her success record prior to Capt
> [REDACTED]
> >arrival!))
> >
> >Any advice would be greatly appreciated.
> >
> >Thank you.
> >
> >
> >
> > V/R
> >
> >
> >
> >
> >
> >

CDR

> >
> >
> >
>

USN

CC:

"[REDACTED] <P61B@BUPERS.NAVY.MIL>



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

5420

Ser 85/0125

3 Feb 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LCDR [REDACTED] SC, USN [REDACTED]

Ref: (a) PERS-311 1610 Memo of 23 Dec 99

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of LCDR [REDACTED] request for removal of her failure of selection from the FY-00 Active Commander Staff Corps Promotion Selection Board and consideration before a special promotion selection board.

2. Without modifications [REDACTED] record as addressed in reference (a), the overall quality and competitiveness of her record does not substantially improve amongst her peers. Therefore, recommend you disapprove her request for removal of failure of selection and a special promotion selection board.

[REDACTED]
BCNR Liaison, Officer Promotions and
Enlisted Advancements Division

5695-00



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

5420

Ser 85/0807

21 Jul 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LCDR [REDACTED], SC, USN [REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 23 Jun 00
(b) PERS-85/0125 memo of 3 Feb 00
(b) PERS-311 1610 memo of 19 May 00
(c) PERS-61/011 memo of 15 Jun 00
(d) SECNAVINST 1401.1B

Encl: (1) BCNR File

1. Reference (a) requested a reconsideration of the advisory opinion in reference (b). Lieutenant Commander [REDACTED] requesting to remove fitness reports from her record, remove her failure of selection from the FY-00 Active Duty Commander Staff Corps Promotion Selection Board and be given consideration before a special promotion selection board.

2. Reference (b) recommends the member's record remain unchanged unless her allegations of discrimination are found to have merit. Reference (c) recommends the fitness report from 1 November 1996 to 8 August 1997 be removed due to hints of bias in the marks, but states that the report is not adverse. We feel that even if the fitness report is removed, the removal action does not substantially improve the officer's record.

3. We recommend disapproval of her request for removal of her failure of selection and consideration before a special promotion board.

[REDACTED]
BCNR Liaison, Officer Promotions
and Enlisted Advancements
Division